

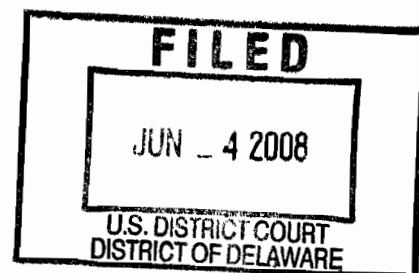
**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

**MANUEL NIEVES,
PETITIONER,**

v.

**PERRY PHELPS, WARDEN, AND
JOSEPH R. BIDEN, III,
RESPONDANTS.**

CIVIL ACT. NO. 06-320-GMS

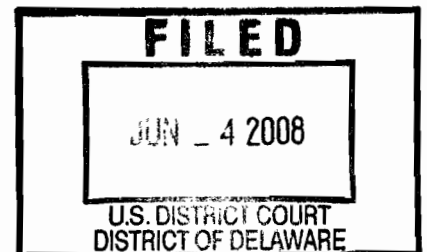


**MOTION FOR IMMEDIATE REVERSE AND REMAND TO
DELAWARE SUPERIOR COURT WITH PLAINTIFF RETURNED
TO THE POSITION HE OCCUPIED PRIOR TO TRIAL**

CIVIL ACTION No. 06-320-GMS

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF DELAWARE**

**PETITIONER ACTING PRO-SE ASKES THIS COURT TO
REVERSE AND REMAND TO DELAWARE SUPERIOR
COURT IMMEDIATELY AND RETURN HIM TO THE
POSITION OF AN INDIVIDUAL WHO MERITS
FREEDOM THAT HE ENJOYED PRIOR TO THE
VIOLATION OF HIS CONSTITUTIONAL RIGHTS FOR
THE FOLLOWING REASONS:**



Maryland v. Craig set the standard by which a child witness can constitutionally testify against a defendant at trial in the absence of face-to-face confrontation with the defendant. 110 S.Ct. 3157. **Craig** held that defendant's right to confrontation is satisfied when (1) the denial of confrontation is necessary to further an important public policy and (2) where the reliability of the testimony is assured. Id @ 3166. **Craig** held that a child-witness may testify out of the presence of the defendant when necessary to further the states interest in protecting the physical and psychological well-being of its children. Id @ 3167. To insure that the state denies face-to-face confrontation only to further this purpose, the state must show on a case by case basis that the procedure is necessary to protect the particular child involved. Id @3169 also **Del. § 3511**. The trial court must hear expert testimony regarding the particular child and must make specific findings that the child would be traumatized, not by the courtroom generally, but by the presence of the defendant, in more than a de mine-mus amount. Id.

To be constitutional, the video-taping procedure must assure the reliability of the child's testimony even though the testimony is not given in the physical presence of the defendant, judge and/or jury. **Craig 110 S.Ct. 3166**. In other words the testimony must be functionally equivalent to **live, in-court testimony** and must be subject to rigorous adversarial testing .Id also see 11 Del. 3511 is where Delaware instituted statutes to insure the reliability and non-coercion of child-witnesses with it's **DEPOSITIONS AND PROCEDURES FOR VIDEO-TAPING CHILD WITNESSES**. In these mandated rules it gives the guide lines for video-taping and who is to be present and ask the questions. In case at hand both Delaware and Federal law were violated. By not following those procedures that insure a fair and just trial and prejudiced the petitioner.

Griffith v. Kentucky 479 U.S. 332 mandates that all cases **state or federal** pending on direct review, as case at hand, are not final and must follow federal laws. The Supreme Court of the United States has since held that the confrontation clause [bars] the states from introducing into evidence out-of-court statements which are testimonial in nature [unless] the witness is unavailable and the defendant had a prior opportunity to cross- examine the witness, regardless of whether such statements are deemed reliable **RICHARDSON v. NEWLAND 342 F. Supp. 2d 900**. This was **denied** the petitioner violating his constitutional rights.

Supreme Court of the United States
Ruled in DANFORTH v. MINNESOTA
No.06-8273

JUSTICE STEVENS delivered the opinion of the Court.

New constitutional rules announced by this Court that place certain kinds of primary individuals conduct beyond the power of the states to proscribe, as well as “**water-shed**” rules of criminal procedures, **[must]** be applied in all future trials, **[all]** cases **pending on direct review**, and all federal habeas corpus proceedings. All other new rules of criminal procedures **must** be applied in future trials and in cases pending on direct review, but may not provide the basis for a federal collateral attack on a state-court conviction.... In **Crawford v. Washington**, 541 U.S. 36, 68-69 (2004) WE HELD THAT WHERE TESTIMONIAL STATEMENTS ARE AN ISSUE, “**THE ONLY INDICIUM OF RELIABILITY SUFFICIENT TO SATISFY CONSTITUTIONAL DEMANDS IS THE ONE THE CONSTITUTION ACTUALLY PRESCRIBES: CONFRONTATION.**” THUS MANDATING THE “NEW RULE” IN CRAWFORD TO ALL THE STATES.

CRAWFORS v. WASHINGTON 124 S.CT. 1354 (March 8,2004) The Supreme Court of the United States said “**THE CONFRONTATION CLAUSE [BARS] THE STATES FROM INTRODUCING INTO EVIDENCE OUT-OF-COURT STATEMENTS WHICH ARE TESTIMONIAL IN NATURE UNLESS THE WITNESS IS UNAVAILABLE AND THE DEFENDANT HAD A PRIOR OPPORTUNITY TO CROSS-EXAMINE THE WITNESS, REGARDLESS OF WHETHER THE STATEMENTS ARE DECLARED RELIABLE.**”

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1 writes that down?

2 A. I do.

3 Q. You do.

4 About how long was your interview with the

5 child?

6 A. I believe it was 50, 55 minutes maybe.

7 Q. Have you seen a copy of the interview?

8 A. Yes, I have.

9 Q. Is it a true and accurate description of your

10 interview with the child?

11 A. Yes.

12 MR. VEITH: That's the copy. Any objection?

13 MR. AHERN: No, assuming what it is

14 represented, yeah.

15 MR. VEITH: State's next exhibit is the copy of

16 the interview.

17 THE CLERK: State's Exhibit 10.

18 MR. VEITH: Thank you.

19 (State's Exhibit No. 10 was admitted into

20 evidence.)

21 MR. VEITH: Your Honor, at this time the State

22 would move to play the audio. It's about an hour long.

23 I don't know if you want to take a break at this time or

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1 go right into it, a ten-minute break.

2 THE COURT: Why don't we take a ten-minute

3 break and we'll listen to the tape recording and then

4 break for lunch for about an hour, if that's acceptable

5 to counsel.

6 MR. VEITH: That's fine.

7 MR. AHERN: That's fine, Your Honor.

8 THE COURT: Take the jury out, please.

9 (The jury leaves the courtroom, 11:50 a.m.)

10 (A short recess was taken.)

11 THE COURT: Are you ready?

12 MR. VEITH: Yes, Your Honor, we're ready.

13 THE COURT: Would you bring the jury back,

14 please.

15 (The jury entered the courtroom, 12:03 p.m.)

16 THE COURT: Where's the defendant? Did we

17 forget about that?

18 THE CLERK: Just like I forgot the swearing in.

19 I'll get Dave.

20 (Pause.)

21 MR. VEITH: Your Honor, the State moves to play

22 the tape at this time.

23 THE COURT: All right.

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1 (Audiotape played, 12:07 p.m. to 1:02 p.m.)

2 (Pause.)

3 THE COURT: Ladies and gentlemen, we are going

4 to break for lunch now. And it's two o'clock.

5 All right with you, gentlemen?

6 MR. VEITH: That's fine.

7 MR. AHERN: Yes, Your Honor.

8 THE COURT: I'll ask you to please return to

9 the jury room at two o'clock. Again, let me just review

10 that you're not to discuss this case with anyone. Have

11 a nice lunch.

12 (The jury leaves the courtroom, 1:03 p.m.)

13 THE COURT: Counsel, anything?

14 MR. VEITH: No, Your Honor.

15 MR. AHERN: No, Your Honor.

16 THE COURT: Court stands in recess.

17 (A lunch recess was taken at 1:03 p.m.)

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1 2:07 p.m.

2 Courtroom No. 103

3 The same day

4 PRESENT:

5 As before noted.

6 MR. VEITH: Your Honor, we're ready.

7 Ms. Kaiser can retake the stand.

8 THE COURT: All right.

9 Will you bring the jury back, please.

10 (The jury entered the courtroom, 2:08 p.m.)

11 THE COURT: Good afternoon, ladies and

12 gentlemen. We're are to proceed.

13 MR. VEITH: Thank you.

14

15 FURTHER DIRECT EXAMINATION

16 BY MR. VEITH:

17 Q. Ms. Kaiser, I just have a few follow-up

18 questions for you.

19 You had an opportunity to review that videotape

20 prior to it being admitted into evidence?

21 A. Yes.

22 Q. You gave some testimony earlier about how the

23 audio and video system works at the Child Advocacy

Desist v. U.S. 89 S.Ct. 1030 arguing **Mapp v. Ohio 81 S.Ct. 1684** ruled that an exclusionary rule of illegally obtained evidence extends to the states and requires the exclusion of illegal evidence to deter illegal police actions.

Due the importance of this constitutional violation the petitioner asks this court to rule immediately and reverse and remand along with issuing an order to release the petitioner to the status he was at prior to trial. The petitioner also asks this court to issue an order excluding said illegal video and place upon the state a mandate of time to recharge petitioner seeing time has diminished his capacity to defend himself, to find defense witnesses and to bring forth evidence that doesn't exist because of the lapse of time. With this illegal action petitioner feels the alleged victim has been manipulated to the point he could not now receive a fair trial. He asks this court to act appropriately.

manuel mieves
.....

Cc; Dept. of Justice

Certificate of Service

I, Manuel Nieves, hereby certify that I have served a true

And correct cop(ies) of the attached: _____

Petitioner's Reply upon the following
parties/person (s):

TO: Clerks Office
U.S District Court of Delaware
J. Caleb Rags Building Lock Box 18
844 King street
Wilmington, DE. 19801

TO: Elizabeth R. McFarlan
Department of Justice
820 N. French street
Wilmington, DE. 19801

TO: _____

TO: _____

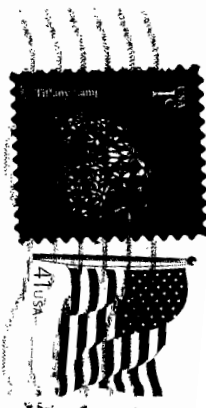
BY PLACING SAME IN A SEALED ENVELOPE, and depositing same in the United States Mail at the Delaware Correctional Center, Smyrna, DE 19977.

On this 2 day of JUNE, 2008

manuel nieves

IM Manuel Nieves
SBI# 464723 UNIT E-D-35
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977

WILMINGTON DE 197
03 JUN 2008 PM 3:17



111 Westview Court
Boys Federal Building
844 King Street
Wilmington DE
19801

1980173515

